

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division

UNITED STATES OF AMERICA

v.

Criminal No. 3:05CR139

SCHPIRO GREENE,

Petitioner.

MEMORANDUM OPINION

Schpiro Greene, a federal inmate proceeding pro se, submitted this motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence. Greene asserted that, in light of the Supreme Court's recent decision in Johnson v. United States, 135 S. Ct. 2551 (2015), his enhanced sentence under the United States Sentencing Guidelines ("USSG") as a career offender is unconstitutional.<sup>1</sup> "Recently, the Supreme Court concluded that the Guidelines are not subject to a vagueness

---

<sup>1</sup> As the Supreme Court has noted,

[u]nder the Armed Career Criminal Act ["ACCA"] of 1984, a defendant convicted of being a felon in possession of a firearm faces more severe punishment if he has three or more previous convictions for a "violent felony," a term defined to include any felony that "involves conduct that presents a serious potential risk of physical injury to another."

Johnson, 135 S. Ct. at 2555 (emphasis added) (quoting 18 U.S.C. § 924(e)(2)(B)). This part of the definition of violent felony "ha[s] come to be known as the Act's residual clause." Id. The Johnson Court held "that imposing an increased sentence under the residual clause of the [ACCA] violates the Constitution's guarantee of due process." Id. at 2563.

challenge under the Due Process Clause. . . . Johnson's vagueness holding does not apply to the residual clause in [USSG] § 4B1.2(a)(2)." United States v. Lee, 855 F.3d 244, 246-47 (4th Cir. 2017) (citation omitted). Thus, Greene's claim lacks merit. Accordingly, the Government's Motion to Dismiss (ECF No. 66) will be granted. The § 2255 Motion (ECF No. 59) will be denied. The action will be dismissed, and the Court will deny a certificate of appealability.

The Clerk is directed to send a copy of this Memorandum Opinion to Greene and counsel of record.

It is so ORDERED.

Date: September 12, 2017  
Richmond, Virginia

/s/ R E P  
Robert E. Payne  
Senior United States District Judge